

**IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT KNOXVILLE**

REBECCA J. AMELL, BY NEXT)	
OF KIN)	SEVIER CIRCUIT
)	
MARVIN H. AMELL,)	
)	Decided: May 3, 2000
Plaintiff/Appellee)	
)	NO. 03S01-9905-CV-00056
vs.)	E1999-01021-WC-R3-CV
)	
)	HON. REX HENRY OGLE
LIBERTY MUTUAL INSURANCE CO.,)	
)	
Defendant/Appellant.)	
)	

For the Appellant:

Mary Elizabeth Maddox
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Knoxville, Tennessee 37901

For the Appellee:

George R. Garrison
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MEMORANDUM OPINION

Members of Panel

Justice William M. Barker
Senior Judge John K. Byers
Special Judge Howell N. Peoples

AFFIRMED

PEOPLES, SPECIAL JUDGE

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. Liberty Mutual Insurance Co. (hereafter "Liberty Mutual") appeals an award of workers' compensation death benefits to the surviving spouse of an employee killed in the course and scope of her employment.

The trial court, acting on a motion for summary judgment, made an award of \$77,196 to be paid at the rate of \$144.75 per week to the surviving spouse, who was the only dependent of the employee. Liberty Mutual contends that the maximum award to the surviving spouse with no other dependents is limited to \$57,900 (400 weeks x \$144.75). We affirm the judgment of the trial court.

Appeal from a summary judgment order in a workers' compensation case is not controlled by the standard of review provided by T.C.A. § 50-6-225, but by Rule 56, T.R.C.P. *Downen v. Allstate Ins. Co.*, 811 S.W.2d 523 (Tenn.1991). Where, as in this case, the facts are not in dispute, "the question on appeal is one of law, and our scope of review is *de novo* with no presumption of correctness accompanying" the trial court's conclusions. *Union Carbide Corp. v Huddleston*, 854 S.W. 2d 87, 91 (Tenn. 1993); *Smith v. Norris*, 218 Tenn. 329, 403 S.W.2d 307 (1966).

On March 27, 1998, Rebecca J. Amell sustained fatal injuries in the course and scope of her employment with Arrow Factory Store in Pigeon Forge, Tennessee. She was survived by Marvin H. Amell, her spouse. Her average weekly wage was \$289.49 generating a workers' compensation rate of \$192.99. The maximum weekly benefit on March 27, 1998, as defined by T.C.A. § 50-6-102(7)(a), was \$492.

Liberty Mutual asserts that T.C.A. § 50-6-210(e)(1) limits the benefits payable to a surviving spouse with no dependent child to one-half of the employee's average weekly wage for 400 weeks. It cites *Spencer v. Towson Moving & Storage, Inc.*, 922 S.W.2d 508 (Tenn. 1996) as limiting the benefits to 400 weeks, and *Schultz v. Majik Market, a Div. of*

Mumford, 621 S.W.2d 738 (Tenn. 1981) as limiting the weekly benefit to one-half of the deceased employee's average weekly wage. Our analysis does not start with these cases, but with the statute. "Legislative intent, however, shall be derived from a statute's face when the statutory language is unambiguous." *Davis v. Reagan*, 951 S.W.2d 766, 768 (Tenn. 1997).

The statute which governs the payment of workers' compensation benefits in death cases is T.C.A. § 50 6-210 which provides as follows:

50-6-210. Dependents – Compensation payments. – (a) PERSONS WHOLLY DEPENDENT. For the purposes of the Workers' Compensation Law the following described persons shall be conclusively presumed to be wholly dependent:

- (1) A surviving spouse, unless it is shown that the surviving spouse was voluntarily living apart from his or her spouse at the time of injury; and
- (2) Children under sixteen (16) years of age.
- (b) PERSONS PRIMA FACIE DEPENDENT. Children between sixteen (16) and eighteen (18) years of age, or those over eighteen (18) years of age, if physically or mentally incapacitated from earning, shall prima facie be considered dependent.
- (c) ACTUAL DEPENDENTS. Wife, husband, child, mother, father, grandparent, sister, brother, mother-in-law, who were wholly supported by the deceased employee at the time of death and for a reasonable period of time immediately prior thereto, shall be considered actual dependents, and payment of compensation shall be made in the order named.
- (d) PARTIAL DEPENDENTS. Any member of a class named in subsection (c) who regularly derived a part of such member's support from the wages of the deceased employee at the time of death and for a reasonable period of time immediately prior thereto shall be considered a partial dependent, and payment of compensation shall be made to such dependents in the order named.
- (e) COMPENSATION IN DEATH CASES. In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto, without administration.
 - (1) SURVIVING SPOUSE AND NO DEPENDENT CHILD. If the deceased employee leaves a surviving spouse and no dependent child, there shall be paid to the surviving spouse fifty percent (50%) of the average weekly wages of deceased.
 - (2) SURVIVING SPOUSE AND CHILD. If the deceased employee leaves a surviving spouse and one (1) or more dependent children, there shall be paid to the surviving spouse for the benefit of such surviving spouse and such child or children, sixty-six and two-thirds (66-2/3%) of the average weekly wages of deceased.
 - (3) SURVIVING SPOUSE AND CHILDREN. HOW PAID. In all cases where compensation is payable to a surviving spouse for the benefit of herself or himself and dependent child or children, the court shall have the power to determine in its discretion what portion

of the compensation shall be applied for the benefit of any such child or children, and may order the same paid to a guardian.

- (4) REMARRIAGE OF SURVIVING SPOUSE. Upon the remarriage of a surviving spouse, if there is no child of the deceased employee, the compensation shall terminate; but if there is a child or children under eighteen (18) years of age, or over eighteen (18) years of age if physically or mentally incapacitated from earning, from the time of the remarriage the child or children shall have status of orphan or orphans, and draw compensation accordingly, not, however, to exceed sixty-six and two-thirds (66-2/3%) of the average weekly wages of the deceased.
- (5) DEPENDENT ORPHANS. If the deceased employee leaves one (1) dependent orphan, there shall be paid fifty percent (50%) of the average weekly wages of the deceased; if the deceased leaves two (2) or more dependent orphans there shall be paid sixty-six and two-thirds (66-2/3%) of the average weekly wages of the deceased.
- (6) PARENT OR PARENTS. If the deceased employee leaves no surviving spouse or child entitled to any payment hereunder, but should leave a parent or parents, either or both of whom are wholly dependent on the deceased, there shall be paid, if only one (1) parent, twenty-five percent (25%) of the average weekly wages of the deceased to such parent, and if both parents, thirty-five percent (35%) of the average weekly wages of the deceased to such parents.
- (7) GRANDPARENT, BROTHER, SISTER, MOTHER-IN-LAW OR FATHER-IN-LAW. If the deceased leaves no surviving spouse or dependent child or parent entitled to any payment hereunder, but leaves a grandparent, brother, sister, mother-in-law or father-in-law wholly dependent upon the deceased for support, there shall be paid to such dependent, if but one (1), twenty percent (20%) of the average weekly wages of the deceased or, if more than one (1) twenty-five percent (25%) of the average weekly wages of the deceased, divided between them or among them share and share alike.
- (8) COMPENSATION TO DEPENDENTS TO CEASE UPON DEATH OR MARRIAGE. If the compensation is being paid under this chapter to any dependent, such compensation shall cease, upon the death or marriage of such dependent, unless otherwise provided herein.
- (9) PARTIAL DEPENDENTS TO RECEIVE PROPORTION. Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of the wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time.
- (10) MAXIMUM AND MINIMUM COMPENSATION. The compensation payable in case of death to persons wholly dependent shall be subject to the maximum weekly benefit and minimum weekly benefit; provided, that if at the time of injury the employee receives wages of less than the minimum weekly benefit, the compensation shall be the full amount of such wages a week, but in no event shall the compensation payable under this provision be less than the minimum weekly benefit. The compensation payable to partial dependents shall be subject to the same maximum and minimum specified in the foregoing sentence; provided, that if the income loss of the partial dependents by such death is less than the minimum weekly benefit, then the dependents shall receive the full

amount of the income loss. This compensation shall be paid during dependency not to exceed the maximum total benefit, payments to be paid at the intervals when the wage was payable as nearly as may be.

- (11) ORPHANS AND OTHER CHILDREN. In computing and paying compensation to orphans or other children, in all cases, only those under eighteen (18) years of age, or those over eighteen (18) years of age who are physically or mentally incapacitated from earning, shall be included, the former to receive compensation only during the time they are under eighteen (18) years of age, the latter only for the time they are so incapacitated. If the dependent is attending a recognized educational institution, benefits shall be paid until twenty-two (22) years of age.
- (12) ACTUAL DEPENDENTS. Actual dependents shall be entitled to take compensation in the order named in subsection (c), until sixty-six and two-thirds percent (66-2/3%) of the monthly wages of the deceased during the time specified in this chapter shall have been exhausted, but the total compensation to be paid to all actual dependents of a deceased employee shall not exceed in the aggregate the maximum weekly benefit.
- (13) DEPENDENCY STATUS NOT AFFECTED BY CERTAIN ASSISTANCE PAYMENTS. Sums distributed under the Employment Security Law, chapter 7 of this title; the Old-Age Assistance Law, title 71, chapter 2, part 2; the Aid to Dependent Children Law, title 71, chapter 3, parts 1 and 2; Aid to Blind Law, title 71, chapter 4, part 1; the federal Social Security Act, or any other public assistance distributed by the United States government, the state of Tennessee, or any county or municipality thereof, shall not be considered income within the meaning of this law and shall not affect the status or compensation of any person entitled to benefits as herein provided.

As pertinent to this case, the statute provides: “The compensation payable in case of death to persons wholly dependent shall be subject to the maximum weekly benefit and minimum weekly benefit; This compensation shall be paid during dependency not to exceed the maximum total benefit, payments to be paid at the intervals when the wage was payable as nearly as may be. T.C.A. § 50-6-210(e)(10). (emphasis supplied) The legislature has defined the term “maximum total benefit” in another part of the workers’ compensation law.

“(13) ‘Maximum total benefit’ means the sum of all weekly benefits to which a worker may be entitled; and . . . (c) For injuries occurring on or after July 1, 1992, the maximum total benefit shall be four hundred weeks (400) times the maximum weekly benefit except in case of total disability.

(14) ‘Maximum weekly benefit’ means the maximum compensation payable to the worker per week; and (viii) For injuries occurring on or after July 1, 1997, the maximum weekly benefits shall be sixty-six and two-thirds percent (66 2/3%) of the employee’s average weekly wage up to one hundred percent (100%) of the state’s average weekly wage as determined by the division.” T.C.A. § 50-6-102.

In the case of *Jones v. General Acc. Ins. Co. of America*, 856 S.W.2d 133 (Tenn. 1993), the Court determined that T.C.A. § 50-6-210 did not specifically limit death benefits to a surviving spouse with no minor dependents for any set number of weeks. “Consequently, an award of death benefits should continue to be paid beyond 400 weeks until the maximum total benefit is reached The only limitation on death benefits to dependents is that the compensation be paid during dependency and must not exceed the maximum total benefit. T.C.A. § 50-6-210(e)(10). Benefits are to be paid until the statutory maximum is reached or until the surviving spouse dies or remarries.” 856 S.W.2d at 135.

Liberty Mutual asserts that *Spencer v. Towson Moving & Storage, Inc.*, 922 S.W.2d 508 (Tenn. 1996) implicitly overruled *Jones*. In *Spencer*, the trial court had found the definition of “maximum weekly benefit” to be ambiguous but the Supreme Court found the statute to be clear and unambiguous. Counsel for Liberty Mutual has failed to distinguish between “maximum total benefit” which was the issue in *Jones* and “maximum weekly benefit” which was the issue in *Spencer*. T.C.A. § 50-6-210 has not been amended since *Jones* was decided, and *Spencer* dealt with a different, but related issue.

The trial court correctly calculated the maximum total benefit to be paid to Mr. Amell as 400 weeks times \$192.99 (Mrs. Amell’s weekly workers’ compensation rate) for a total of \$77,196. As the surviving spouse with no dependent child, Mr. Amell should be paid weekly benefits at the rate of \$144.75 (one-half of Mrs. Amell’s average

weekly wage) until he dies or remarries or until the maximum total benefit is paid. T.C.A. 50-6-210(e)(1) and (e)(10). *Jones v. General Acc. Ins. Co. of America*, supra, at 135; *Spencer v. Towson Moving & Storage, Inc.*, supra, at 210, footnote 4.

The judgment of the trial court is affirmed and remanded for enforcement. The costs of this appeal are taxed to the defendant-appellant.

Howell N. Peoples, Special Judge

William M. Barker, Justice

John K. Byers, Senior Judge

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE, TENNESSEE

**REBECCA J. AMELL, BY NEXT OF KIN MARVIN H. AMELL VS.
LIBERTY MUTUAL INSURANCE COMPANY**

**Sevier Circuit Court for Sevier County
No. 98-346-III**

No. E 1999-01021-WC-R3-CV -Decided May 3, 2000

JUDGMENT

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of facts and conclusions of law are adopted and affirmed and the decision of the Panel is made the Judgment of the Court.

Costs on appeal are taxed defendant/appellant, Liberty Mutual Insurance Company and Mary Elizabeth Maddox, surety, for which execution may issue if necessary.

05/03/00